



California Fair Political Practices Commission

July 27, 1989

Margaret E. O'Donnell
Breon, Galgani, Godino & O'Donnell
The Shell Building, 22nd Floor
100 Bush Street
San Francisco, CA 94104

Re: Your Request for Advice
Our File No. A-89-354

Dear Ms. O'Donnell:

You have requested advice on behalf of S. Joseph Simitian, a member of the Board of Education of the Palo Alto Unified School District, regarding his duties under the conflict of interest provisions of the Political Reform Act (the "Act").¹ Your letter requests an update of advice issued by us in 1985. (O'Donnell Advice Letter, No. A-85-101, copy enclosed.)

QUESTION

May Mr. Simitian participate in decisions regarding the creation of a model school or schools to promote interdistrict cooperation?

CONCLUSION

Mr. Simitian may participate in decisions regarding a model school or schools unless the decisions will have a reasonably foreseeable material financial effect on the Ravenswood real property in which he has an interest or the partnership which owns the property.

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

FACTS

At the time our previous advice letter was issued, the Palo Alto Unified School District was engaged in a lengthy legal process concerning a desegregation lawsuit. (Tinsley, et al. v. Palo Alto Unified School District, et al., Sup. Ct. San Mateo Co., No. 207010.) A court settlement was reached in the case in 1986 which included a transfer plan for the admission of students from the Ravenswood School District to eight neighboring districts and an improvement study in the case to assist Ravenswood's effectiveness. The sole remaining issue is the question of the creation of a model school or schools to promote interdistrict cooperation.

At the time of our previous advice letter, Mr. Simitian was an employee of TRI Development Company. TRI had an option to purchase an approved condominium conversion within the boundaries of the Ravenswood School District (the "Ravenswood property"). TRI planned to undertake a program of conversion leading to the sale of condominium units. Mr. Simitian was to receive compensation based on the profits derived from the sale of that project.

The facts have now changed. Mr. Simitian remains employed by TRI but the Ravenswood property has been purchased from TRI by a partnership. Half of the partnership is owned by the chairman of the board and majority owner of TRI. As part of the purchase price, the partnership gave TRI a promissory note which is secured by the Ravenswood property. Mr. Simitian is entitled to approximately \$100,000 in profit-sharing fees if the note is paid. The partnership which owns the property hires Mr. Simitian on occasion as a consultant.

ANALYSIS

Section 87100 prohibits a public official from participating in any governmental decision in which he or she has a financial interest. An official has a financial interest in a decision if it will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to,

received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103 (a) - (e).

In the present situation, Mr. Simitian has an interest in the Ravenswood property in the form of a security interest. (Section 82033.) Furthermore, the partnership which owns the property is a source of income to Mr. Simitian which for purposes of this letter we will assume exceeds \$250 in the 12 months preceding the decision.² Accordingly, Mr. Simitian may not participate in any decision which will have a reasonably foreseeable material financial effect on the Ravenswood property or the partnership which owns it.

Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however certainty is not required. (Downey Cares v. Downey Redevelopment Com. (1987) 196 Cal. App. 3d 983, 989-991; Witt v. Morrow (1977) 70 Cal. App. 3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed).) The Act seeks to prevent more than actual conflicts of interest; it seeks to prevent even the appearance of a conflict of interest. (Witt v. Morrow, supra at 823.)

Materiality

The Commission has adopted regulations which provide guidelines for determining whether the reasonably foreseeable effects of a decision are material. The guidelines differ depending on whether the official's economic interest is directly or indirectly affected by a decision.

² Even assuming the partnership has not been a source of income of \$250 or more in the 12 months preceding the decision, Mr. Simitian may have an economic interest in the partnership by virtue of the fact that it may be an "otherwise related business entity" to TRI. (Regulations 18236 and 18706, copies enclosed.)

The decision on which you have requested our advice involves the creation of a model school or schools to promote interdistrict cooperation between the Ravenswood and Palo Alto School Districts. If such a school or schools are created, it is not yet clear whether attendance at such schools would be limited to students who reside in any particular area. If so, any decision which has a reasonably foreseeable effect upon whether the Ravenswood property will be included in that area will directly affect the Ravenswood property. (Regulation 18702.1(a)(3).) Such a decision will require Mr. Simitian's disqualification, unless it will have no financial effect on the Ravenswood property.³ Assuming the Board's decision does not directly affect the Ravenswood property, we must analyze whether the indirect effect of such a decision upon the partnership, or the Ravenswood property, is material.

Regulation 18702.3 provides guidance with respect to whether the indirect effect of a decision upon an interest in real property is material. The regulation provides different tests depending on the distance of the property in which the official has an interest, from the property which is the subject of the decision. For example, if the decision involved whether to create a model school within 300 feet of the Ravenswood property, Mr. Simitian would be disqualified unless the decision would have no financial effect on the property. (Regulation 18702.3(a)(1).) If the decision involved whether to create a model school in an area between 300-2500 feet of the Ravenswood property, the effect of the decision would be material if it would affect the fair market value of the property by \$10,000 or more, or the rental value of the property by \$1,000 or more per 12 month period. (Regulation 18702.3(a)(3).) Finally, if the decision involved whether to create a model school in a location more than 2,500 feet from the Ravenswood property, the effect of the decision would not be material unless there were specific circumstances indicating that the fair market value or rental value of the property would be affected by the dollar amounts described above. (Regulation 18702.3(b)(1).)

Regulation 18702.2 provides guidance with respect to whether the indirect effect of a decision upon a business entity is material. The regulation describes different tests depending on the size of the business entity. For example, with the smallest size business entity, the effect of a decision is material if it will affect the entity by:

- (1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

³ Because the property in which Mr. Simitian has an interest includes a block of 222 condominiums, the effect of any such decision is distinguishable from the effect on the public generally.

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

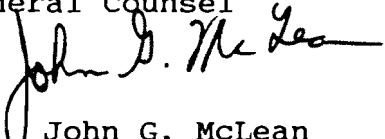
Regulation 18702.2(g)(1)-(3).

Mr. Simitian will need to review the regulation to determine which test is appropriate for the partnership.

I trust this responds to your request. If you have any further questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: John G. McLean
Counsel, Legal Division

KED/JGM/aa

Enclosures

BREON, O'DONNELL & MILLER

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June 7, 1989

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SAN FRANCISCO

REPLY TO: _____

Kathryn Donovan
General Counsel
Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804

Re: Conflict of Interest Opinion Request/S. Joseph
Simitian, Palo Alto Unified School District;
Our File 5620.1000

Dear Ms. Donovan:

In April of 1985 I wrote to the Fair Political Practices Commission (FPPC) on behalf of the Board of Education of the Palo Alto Unified School District and Board Member, S. Joseph Simitian, requesting an opinion letter concerning a potential conflict of interest under the Political Reform Act, Government Code sections 8100, et seq.

In June of 1985 I received a response from your office, a copy of the opinion dated June 12, 1985 is enclosed for your convenience. Since that opinion developments have occurred which require that I request another opinion letter on behalf of Mr. Simitian and the Board.

At the time of the opinion the Palo Alto Unified School District (District) was engaged in a lengthy legal process concerning a desegregation lawsuit. (Tinsley, et al. v. Palo Alto Unified School District, et al. (Sup. Ct. San Mateo Co., No. 207010.)) A court settlement was reached in the case in 1986 which included a transfer plan for the admission of students from the Ravenswood School District to eight neighboring districts and an improvement study in the case to assist Ravenswood's effectiveness. The sole remaining issue is the question of the creation of a model school or schools to promote interdistrict cooperation.

Kathryn Donovan
Fair Political Practices Commission
June 7, 1989
Page 2

A second set of facts concerns Mr. Simitian. Since 1985 Mr. Simitian's interest in the Ravenswood property, which was the focus of the original request, has changed. Mr. Simitian remains employed by TRI Development Company (TRI) but the property in East Palo Alto has been purchased from TRI. Mr. Simitian no longer has a percentage interest in the property having been bought out by a note to TRI. The note is secured by the property. The group purchasing the project is a partnership, half of which is owned by the Chairman of the Board and majority owner of TRI. The partnership which owns the property hires Mr. Simitian on occasion as a consultant.

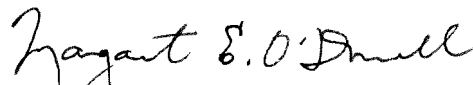
The question which now arises is whether, based upon the two changes in circumstances, Mr. Simitian currently is precluded from full participation in the remaining issue of Tinsley case?

Both Mr. Simitian and I would be pleased to furnish you additional information, if necessary.

Thank you for your assistance in this matter.

Very truly yours,

BREON, O'DONNELL & MILLER


Margaret E. O'Donnell

MEO/lb

Enclosure

cc: S. Joseph Simitian, w/o encl.
Henry M. Levin, w/o encl.



California Fair Political Practices Commission

June 14, 1989

Margaret E. O'Donnell
Breon, O'Donnell & Miller
100 Bush Street, 22nd Floor
The Shell Building
San Francisco, CA 94104

Re: Letter No. 89-354

Dear Ms. O'Donnell:

Your letter requesting advice under the Political Reform Act was received on June 9, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads 'Kathryn E. Donovan'.

Kathryn E. Donovan
General Counsel

KED:plh

State of California



Fair Political Practices Commission

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Technical Assistance • • Administration • • Executive/Legal • • Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

June 12, 1985

COPY RECEIVED

RECEIVED
BREON, GALGANI,
GODINO & O'DONNELL

Margaret O'Donnell
Breon, Galgani, Godino & O'Donnell
The Shell Building, 22nd Floor
100 Bush Street
San Francisco, CA 94104

Re: Your Request for Advice
Our File No. A-85-101

Dear Ms. O'Donnell:

Thank you for your letter requesting advice on behalf of S. Joseph Simitian, President of the Board of Education of the Palo Alto Unified School District, regarding his duties under the conflict of interest provisions of the Political Reform Act.^{1/}

FACTS

The Palo Alto Unified School has been involved for approximately nine years in a desegregation lawsuit, Tinsley, et al. v. Palo Alto Unified School District, et al. (Sup. Ct. San Mateo Co., No. 207010), which basically alleges that the Ravenswood School District (with a majority of black students) and its surrounding school districts (with a majority of white students) are racially segregated and that an interdistrict desegregation remedy should be ordered to integrate the districts. Such a remedy could provide that students from the Ravenswood School District may attend school in the Palo Alto Unified School District and students from the Palo Alto School District may attend school in the Ravenswood School District. Petitioners are currently requesting that settlement discussions take place which could result in the student interdistrict attendance remedy previously described.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

Margaret O'Donnell
June 12, 1985
Page 2

Mr. Simitian is employed by TRI Development Company (TRI). His firm has an option to purchase an approved condominium conversion within the boundaries of the Ravenswood School District. It is anticipated that the option will be exercised on or about June 5, 1985. At that time TRI will undertake a program of conversion leading to the eventual sale of individual condominium units. The terms of Mr. Simitian's employment agreement with TRI provide that he will receive compensation based on the profits derived from the sale of that project. In effect, Mr. Simitian will receive a commission for his services.

The condominium conversion project in question consists of a total of 222 units, 72 of which are 2-bedroom units, 12 of which are 2-bedroom townhouses, and 138 of which are single bedroom units. Mr. Simitian has informed you that, due to the great demand for residential property in the Palo Alto area, TRI expects the units to sell quickly.

QUESTION

Is Mr. Simitian required to disqualify himself from participating in the Board's decisions regarding the Tinsley case?

CONCLUSION

Mr. Simitian is not required to disqualify himself from participating in the Board's decisions regarding the Tinsley case unless the decisions would have a reasonably foreseeable material financial effect on either TRI or the amount of commission income Mr. Simitian would receive from the sale of the condominium units, as discussed in the following analysis.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to use his official position to influence any governmental decision in which he knows or has reason to know he has a financial interest. A public official has a financial interest in a decision if the decision would have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on, among other interests, any source of income aggregating \$250 or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made. Section 87103(c).

Margaret O'Donnell
June 12, 1985
Page 3

Mr. Simitian has received at least \$250 in the last 12 months from TRI, therefore, TRI is a source of income to Mr. Simitian for purposes of Section 87103(C). If the Board of Education is confronted with a decision which would have a reasonably foreseeable material financial effect on TRI, Mr. Simitian must disqualify himself from participating in that decision.

In general, the effect of a decision is material if it is a "significant" one. 2 Cal. Adm. Code Section 18702(a). The Commission has adopted regulations 2 Cal. Adm. Code Sections 18702 and 18702.2 (copies enclosed), which contain monetary guidelines for determining whether the effect of a decision will be considered material. Two of the tests for determining materiality apply to Mr. Simitian's situation. The first is provided in 2 Cal. Adm. Code Section 18702.2(g), which requires an examination of the effect of the decision on TRI.^{2/} Accordingly, if it is reasonably foreseeable that the decision facing the Board of Education would affect TRI in any of the following ways, the effect of the decision will be considered material:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

2 Cal. Adm. Code Section
18702.2(g).

Therefore, applying the above test, if the Board of Education's decision regarding the Tinsley case could result in

^{2/} Based on information provided by Dan Fritz at your law firm, it appears that 2 Cal. Adm. Code Section 18702.2(g) is the appropriate test to apply to TRI. However, if you obtain additional information about TRI which indicates that a different standard in 2 Cal. Adm. Code Section 18702.2 is appropriate, you should apply that standard.

Margaret O'Donnell
June 12, 1985
Page 4

an increase or decrease in the average selling price of at least \$46 per unit in the 222-unit condominium conversion project, there would be an effect on TRI's fiscal year gross revenues of \$10,000 or more, and the effect would be considered material. If such an effect is reasonably foreseeable, Mr. Simitian must disqualify himself from participating in the Board's decision.

The second test which applies to Mr. Simitian's situation is contained in 2 Cal. Adm. Code Section 18702(b)(3)(A), which provides that the effect of a decision will be considered material if it will directly increase or decrease the amount of income to be received by the official in an amount of \$100 or more. You have informed us that Mr. Simitian will receive a commission equal to approximately 20 percent of the profits realized from the condominium conversion project. Therefore, any decision of the Board of Education which would result in an increase or decrease in the selling price of the condominium units would also affect the commission on sales Mr. Simitian will receive from TRI. If the effect of the decision could result in an increase or decrease of \$100 or more in Mr. Simitian's commission income, he must disqualify himself from participating in the Board's decision.

From the information we have received about the condominium conversion project and the Tinsley case, it is not possible for us to determine whether the Board's decision would affect the value of condominium units. There is no question that the quality of the public schools which serve a residential area is an important factor for many people considering the purchase of a home in that area.^{3/} However, we have been informed that real estate appraisers do not have a method of quantifying the effect of public school quality on residential property values. You and Mr. Simitian are in a better position than we are to obtain information about the relative quality of the schools in question and the impact of an interdistrict attendance remedy on residential property values in the Palo Alto area, which will assist you in determining how the Board's actions could affect the property in question. Accordingly, we leave you with the

^{3/} A comparison of the 1984-85 fiscal year revenue limits for the Palo Alto Unified School District and the Ravenswood School District indicates that Palo Alto receives \$3,086 per unit of average daily attendance and Ravenswood receives \$2,023 per unit of average daily attendance. This difference in funding may indicate a difference in the quality of educational opportunities in the two school districts. See, Serrano v. Priest (1976), 18 Cal. 3d 728, 747-748, cert. denied 432 U.S. 907, supplemented 20 Cal. 3d 25.

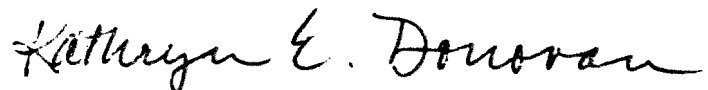
Margaret O'Donnell
June 12, 1985
Page 5

responsibility of applying the above tests and determining whether Mr. Simitian must disqualify himself from the Board's decisions in the Tinsley case.

In the event that Mr. Simitian is required to disqualify himself from participating in the Board's decision on the Tinsley case, Mr. Simitian may not vote on any of the Board's decisions on that matter. 2 Cal. Adm. Code Section 18700(b)(1) (copy enclosed). He would be required to refrain from participating in any way in the Board's discussions during open session (he may not ask questions, state his opinion, etc.), although he would not be required to leave the room or step down from his seat with the other Board members. Mr. Simitian would be prohibited from attending closed sessions of the Board while discussion or action takes place with respect to the Tinsley case, and he would also be prohibited from discussing the status of the Tinsley case at any time with other Board members or staff for the purpose of influencing the Board's decision with respect to the Tinsley case. 2 Cal. Adm. Code Sections 18700(e) and 18700.1(a).^{4/} However, Mr. Simitian would not be required to refrain from making public comments on the Tinsley case if questioned by members of the press or public. 2 Cal. Adm. Code Section 18700.1(b)(2).

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,



Kathryn E. Donovan
Counsel
Legal Division

KED:plh
Enclosures

^{4/} At its June 5, 1985 meeting, the Commission adopted amendments to 2 Cal. Adm. Code Section 18700 and approved the adoption of 2 Cal. Adm. Code Section 18700.1, which would clarify the meaning of "using one's official position to influence" a decision. I have enclosed a copy of these provisions, which will become effective in early September.

55-354

BREON, O'DONNELL & MILLER

FPPC

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August 10, 1989

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REPLY TO ~~SAN FRANCISCO~~

John G. McLean
Counsel, Legal Division
Fair Political Practices Commission
Post Office Box 807
Sacramento, California 95804-0807

Re: Conflict of Interest Opinion Request/
S. Joseph Simitian, Palo Alto Unified
School District;
Our file 56200;
Your file no. A-89-354

Dear Mr. McLean:

Thank you for your advisory opinion dated July 27, 1989
regarding S. Joseph Simitian. Both he and the Palo Alto Unified
School District appreciate receiving it.

After reviewing the opinion I would like to clarify
that Mr. Simitian's profit-sharing fees, the approximate \$100,000
mentioned on page 2 of the opinion, have not yet reached \$100,000
but have ranged as high as \$92,000 and currently are about
\$75,000. I do not believe that this information affects your
opinion, but I wanted to inform you of the specific amounts.

Thank you for all of your assistance.

Very truly yours,

BREON, O'DONNELL & MILLER

Margaret E. O'Donnell
Margaret E. O'Donnell

MEO/jk
cc: S. Joseph Simitian